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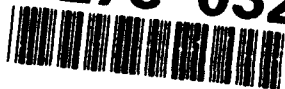
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THESIS

WOMEN, RAPE, AND WAR: "GAINING REDRESS WITHIN  
A HUMAN RIGHTS FRAMEWORK"

by

Carolyn J. Washington

December, 1993

Thesis Advisor:

Roman Laba

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**Women, Rape, and War: "Gaining Redress Within a Human Rights Framework"**

by

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Submitted in partial fulfillment  
of the requirements for the degree of

**MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS**

from the


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## ABSTRACT

The evolution of human rights and the world women's movement have combined for the first time to place rape as an instrument of war on the agenda of international politics. Rape in war has been regarded as an incidental, accidental and individual violation of military law. It was rarely been given scholarly consideration, not even by historians of war, except to glorify it as a form of propaganda.

This thesis will examine: (1) how the historical subordination of women in peacetime is related to the wartime rape of women, (2) the manner in which the mass rapes in the Bosnian War were brought to the world attention and onto the agenda of international human rights and (3) the impact of the feminist movement in the United States in redefining the way sexual assault and rape are understood in our culture.

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## EXECUTIVE SUMMARY

Rape is an act of terror, power and subordination. Rape during war is a reflection of the attitudes and treatment of women in peacetime. During times of war and intense social conflict, women experience an escalation in the violence that threatens and pervades their daily lives.

The process of gender socialization that begins in early childhood works to prepare us for participation in society as males or females throughout our lives. Like other forms of inequality, gender inequality can be regarded as a distribution of the rights of control.

Rape is an effective means tactic of war because it attests to the superior masculinity of the conqueror in a world where men define their manhood in terms of their ability to possess and protect women.

In October 1992, the Bosnian Interior Ministry reported that some 50,000 women and girls, mostly Muslims had been raped during hostilities there between the Serbs, Muslims, and Croatsians. The numbers have varied over the months, as international investigative teams attempt to collect data. However, what is definite is that the Serbs are using rape to drive the Muslims from their homes, as evidenced by accusations against the same military and police units. Women are systematically raped, abducted, impregnated and held in death rape camps.

There have been rapes in war before, even systematic rape like the ones in Bosnia. But what is unique about Bosnia is that it has

served as a catalyst in mobilizing women's groups worldwide who seek to redress rape as a "human rights" issue and not merely a "female" problem. Women's rights are human rights. The term "women's human rights" has come to symbolize this effort.

What is also unique is that these groups are mobilizing within an environment of "a new world polity," which emphasizes the rights of all citizens of the world, men and women alike.

The issues of rape and sexual assault have been major concerns of the feminist movement since its revival in the 1960s. Because of the work of the feminists, the contemporary understanding of rape and sexual assault, and the social response to sexual violence have undergone revision.

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## I. INTRODUCTION

"And I told him that in spite of my best efforts that unquestionably there would be some raping."<sup>1</sup> This statement denotes the general acceptance of the rape of women during war. Rape in war has been regarded as an incidental, accidental and individual violation of military law. It was rarely discussed even by historians of war.

My hypothesis is that the evolution of human rights and the world women's rights movement have combined for the first time to place rape as an instrument of war on the agenda of international politics. This thesis will examine: (1) how the historical subordination of women in peacetime is related to the wartime rape of women (Chapter II), (2) the manner in which the Bosnian War rapes were brought to world attention and onto the agenda of international human rights (Chapters III and IV) and (3) the impact of feminists in redefining the way sexual assault and rape are understood in our culture (Chapter V).

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<sup>1</sup>George S. Patton, "War As I Knew It," Boston: Houghton Mifflin, 1947, p.23.

## **II. THE EVOLUTION OF WOMEN IN SOCIETY**

Rape is an act of terror, power and subordination. Rape during war is a reflection of attitudes and treatment of women during peacetime. During times of war and intense social conflict, women experience an escalation in the violence that threatens and pervades their daily lives.

Before one can even begin a discussion on the issue of rape in war, it is important to understand the evolution of women to a position of subordination. The process of gender socialization in early childhood works to prepare us for participation in society as males or females throughout the course of childhood, adolescence and adulthood. However, society alone cannot account for the differences in power and prestige apparently between men and women in almost all societies. Like other forms of inequality, gender inequality can be regarded as a distribution of the rights of control.

There are two basic schools of thought on the social organization of gender or "gender stratification." The first is "biogenetic" and the second is "biocultural."

### **A. GENDER STRATIFICATION-THE BIOGENETIC ARGUMENT**

Those scholars who favor the biogenetic theory argue that the biological and genetic aspects of men and women such as in hormonal patterns, physical strength and size, aggressiveness,

and the ability to give birth account for differences. Whether they view such differences as innate or a natural outgrowth of evolution, biogeneticists contend that-sex based inequality and the natural superiority of the male are inevitable, immutable and necessary for the survival of the species.

Susan Brownmiller, author of "Against Our Will," and a noted authority of rape, offers a biological interpretation of the evolution of an unequal status of women.

Man's discovery that his genitalia could serve as a weapon to generate fear was one of the important discoveries of prehistoric times, along with the use of fire and the first crude stone axe.<sup>2</sup>

Her analysis suggests that man rapes because he "can," due to the structure of his anatomy. The fact that women are biologically different from men makes them vulnerable because they can not retaliate in the same manner as the assault was inflicted upon them. And because of this vulnerability they are unequal to man. This genital inequality in a social order based on "the primitive system of retaliatory forces, made man the predator and woman his natural prey."<sup>3</sup> Based on woman's inability to protect herself, she was placed in a position

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<sup>2</sup>Susan Brownmiller, "Against Our Will," New York, Bantam Books, 1987.

<sup>3</sup>Ibid, p.7.

where the only way to save herself was to find protection among the predators. It is perhaps the fear of an "open season" of rape, more so than the desire to be monogamous or love that accounted for this "original subjugation" of woman by man, her "domestication by protective mating."<sup>4</sup> It gave the man title to the female's body.

Taking a mate attested to his greatness as a warrior in that he now had to fight off all other attackers or scare them off with the retaliatory threat of raping their women.<sup>5</sup>

Women in turn paid a dear price for this protection.

And those who did assume the historic burden of her protection later formalized as husband, father, brother, clan-extracted more than a pound of flesh. They reduced her status to that of chattel.<sup>6</sup>

Bride capture, the forcible abduction and rape of women became an acceptable way of acquiring women. This violent practice existed in England as late as the fifteenth century. Later, more civilized men entered into business propositions with fathers to obtain wives with the payment of fifty pieces of silver, the "bride price."

Given the status of women as property, any definition of rape would have to be one that protected her as such, a property crime, and not a statute designed to protect her

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<sup>4</sup>Ibid, p.8.

<sup>5</sup>Ibid, p.8.

<sup>6</sup>Ibid, p.10.

person. Rape became a crime of man against man. Since females had no rights to their own bodily integrity, an acceptable definition of rape had nothing to do with her refusal or consent to the act.

Criminal rape, as the patriarchal father saw it, was a violation of the new way of doing business. It was, in a phrase, the theft of virginity, an embezzlement of his fair price on the market.<sup>7</sup>

#### **B. GENDER STRATIFICATION-THE BIOCULTURAL ARGUMENT**

The second school of thought the biocultural approach, is part of a growing body of anthropological research which focuses on gender differences that are the result of "a sexual division of labor." Bioculturalists feel that the biological differences between men and women is not enough to explain the stratification of the sexes by gender. A variety of "cultural adaptations" must be considered.

To the bioculturalists, male superiority is not inevitable. It appears that they are in the case of societies where males dominate, only because they have established a system, which allows them to have greater power over women. This concept is known as patriarchy.

In his essay entitled, "The Origin of the Family, Private Property and the State," Friedrich Engels, traces the

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<sup>7</sup>Ibid, p.7.

development of society to a time when there was an equality of the sexes.

Men and women lived together in large clans or tribes, working together for subsistence and survival. Women managed the household and were well respected and politically equal to men. Men in turn provided the food for the family and did other work outside of the home.<sup>8</sup>

As technology developed, men were able to produce more food than the family actually needed. As this surplus of goods became available, the idea of private property as goods that could be controlled by individual men also emerged. The ability to publicly exchange brought power.

Since household chores, the work of women could not be amassed in this manner, and women's only purpose was now in serving her family, women became wards of men. They lost their status power in an exchange economy where they were wholly subordinated.<sup>9</sup>

Along with the rise of private property came the issue of inheritance. Children, the heirs of men with property and women as the producer of these heirs, gained a new significance. Men began to control women's reproductive functions. Virginity, chastity, and monogamy developed as means for men to insure their paternity and maintain the legitimate lines of inheritance.

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<sup>8</sup>Friedrich, Engels, "The Origin of the Family, Private Property and the State," Feminists Frontiers III, New York: McGraw Hill, 1993.

<sup>9</sup>Ibid.

Because of the subordination of women to a position of property, in war

access to a woman's body became a hallmark of success. Triumph over a woman's body became a way measure victory, a part of a soldiers proof of masculinity and success, and a tangible reward for his services. In war, rape makes heroes out of ordinary men. In the name of victory, and the power of the gun, war provides man with a tacit license to rape.<sup>10</sup>

Rape is an effective tactic of war because it attests to the superior masculinity of the conqueror in a world where men define their manhood in terms of their ability to possess and defend their women. In war, rape is the conscious effort of the aggressor to destroy its opponent. Its goal is the total demoralization of the victim's side.

Rape has accompanied every conflict from wars of religion to wars of revolution. It has generally been viewed as the act of the conqueror, although all sides are guilty of rape. Women in war experience a "double jeopardy."<sup>11</sup> They are victims twice. Once as members of the defeated side and second as victims of gender-oriented sex. While opposing forces of war each have differing views, women on all sides share a common bond as victims.

In World War I (WWI), rape gained immediate international

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<sup>10</sup>Ibid, p.25.

<sup>11</sup>Marcia Staimer, "Women and War: Double Jeopardy," USA Today, 7 October 1992.

attention as the term "Rape of the Hun" became synonymous with the Nazi invasion of Belgium in August 1914. The reason for its notoriety had nothing to do with the victims of the rape. "It signaled the evolution of a new form of battle, the scientific use of propaganda."<sup>12</sup>

In World War II (WWII), rape, as an act by which the male demonstrates his superior power, was logical within the framework of the fascist beliefs of the Germans and the Japanese. The goal was the total humiliation and destruction of inferior people and the establishment of their own master race. There were numerous accounts of rape during a reign of terror as the Nazis marched across Europe.

During the nine-month terror in March 1971, that followed the declaration of independence of the Bangladesh government from Pakistan, as many as 400,000 rapes were reported. Women, mostly Muslims were abducted and imprisoned in rape death camps.

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<sup>12</sup>Arnold J. Toynbee, The German Terror in Belgium, New York: George H. Doran, 1917.



### **III. RAPE IN THE BOSNIAN WAR**

In October 1992, the Bosnian Interior Ministry reported that some 50,000 women and girls, mostly Muslims, had been raped. Later a team of European Community Investigators gave estimates of 20,000 rapes. A recent update by the New York Times fixes the number to be much lower. However, there is still evidence of systematic rape based on the reoccurrence of a number of incidences within a particular command of troops.

A United Nations (UN) War Crimes Commission has collected about 3,000 rape cases in its data base at the International Human Rights Law Institute at the DePaul University in Chicago. Thus far, the four member commission has identified only 800 victims by name. But on the basis of examination of the first 300 named victims, the commission has concluded that the raping of Muslim women was indeed used by the Serbs in driving the Muslims away from their homes. Accusations of rape among the same military forces and police units support this theory. Either the perpetrators actually encouraged to rape or just not punished for their acts.

#### **A. SYSTEMATIC RAPE**

Rape in the Bosnian war is being employed as a systematic weapon of war as opposed to incidental occurrences of war.

The difference being that systematic rape implies an organized, deliberate effort to rape, while incidental rape is more of a "hit or miss nature." This does not imply that the latter is of any less concern. One rape is one rape too many.

Systematic abuse includes rape and forced pregnancy. Women are raped, impregnated and expelled from their country. The rape of Muslims in Bosnia is not only destroying their cultural and religious integrity, but the reproductive potential of their entire nation. Young girls are raped.

In the evening, after heavy drinking, the Chetniks would come in the hall with their lamps. Stepping on us, they would look for girls, not older than 12, 13.<sup>13</sup>

Vasvija, age 12, was taken from her village, along with her mother and sibling and taken to Partizan Hall, a Serb run detention camp in the nearby eastern Bosnian town of Foca: They brought me to a flat. They raped me."<sup>14</sup> She was raped over a period of nine consecutive nights by different men. Girls as young as 7-years-old have reportedly been raped.

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<sup>13</sup>Ibid.

<sup>14</sup>"Tom Post, "A Pattern of Rape," Newsweek, 4 Jan 93, p. 32.

Old women are not spared.

The 60-year-old woman from eastern Croatia, who says she has no plans except to die, exhibits little emotion in telling of countless acts of forced oral sex by sadistic soldiers.<sup>15</sup>

Judy Darnell, a registered nurse from Marlton, New Jersey was in Slavonski Brod, Croatia, where she spoke with this 59-year-old woman whose village was invaded by Serbs.

They demanded to know where the young women were, but were told, We are all old. The woman then told Darnell that the men then repeatedly raped an 82-year-old woman. When they turned on the 59-year-old woman she begged them not to attack her, telling them she had just had a hysterectomy. They told her, 'I'll show you a hysterectomy.' They forced her to the ground. They put their hands inside her and tried to remove her insides. When they could not, they put a knife inside her. At that point she was covered in blood, and about 10 men, one after another proceeded to rape her.<sup>16</sup>

These are not the acts of an "invading army." The general role of rape in war is that it is the act of the conqueror and a symbol of defeat for the losing side. Normally in war, women are raped by outside or foreign forces. However, in the case of Bosnia's civil war, the rapists are not strangers, but people whom the victims have had some relationship with, if no more than just as acquaintances. Women are being raped by men that they know.

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<sup>15</sup>Carol J. Williams, "Balkan War Rape Victims Traumatized and Ignored," Los Angeles Times, 30 Nov 1992, A1.

<sup>16</sup>Judy Mann, "Report From The Front," The Washington Post, 15 Jan 93, p.32.

Ziba Hasanovic 18, was taken to a temporary bordello on the second night of the occupation of her town by Serbian forces. "Only two nights I was not raped. I knew all of them who did it. They were my neighbors."<sup>17</sup> Aida, 20, was attacked by Dragan 3., a Serb policeman who was her neighbor. He justified his assault by telling her "It is war, you can't resist. There is no law and order."<sup>18</sup>

### 1. Rape and abduction

Women are raped on the spot or with abduction.

One of the Chetniks ordered me to follow him into a house in my village, Rizvanovici. I had to go. He ordered me to undress. I took off my clothes, feeling that I was falling apart. The feeling seemed under my skin. I was dying, my entire being was being murdered. I closed my eyes. I cried, twisted my body convulsively, bled. I had been a virgin. He told me to be careful because my family's destiny depended on me. He went out and invited two other Chetniks to come in.<sup>19</sup>

A 28-year-old woman being sheltered at a mosque recounts this horror.

They kicked in the door. I don't know how many. They just started going through everything in the house and demanding to know where we kept our D-marks (German currency). I kept telling them that

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<sup>17</sup>Roy Gutman, "Rape by Order," New York Newsday, 23 Aug 92, p. 7.

<sup>18</sup>Tom Post, "A Pattern of Rape," Newsweek, 4 Jan 93, p. 32.

<sup>19</sup>Nina Kadic, "Dispatches from Bosnia and Herzegovina: Young Survivors Testify to Systematic Rape." MS, 1 Mar 93.

we didn't have any, but they didn't believe me. They took turns beating and raping.<sup>20</sup>

## **2. Rape as an act of terror**

Rape in front of crowds is a deliberate attempt to degrade and terrorize.

Every day the same picture was repeated; they would rape and kill in front of us. Once a young woman with a baby was taken in the middle of the hall.

It was June. They ordered her to take off her clothes. She put the baby on the floor next to her. Four Chetniks raped her; she was silent, looking at her crying child. When she was left alone, she asked if she could breast-feed the baby. Then a Chetnik cut the child's head off with a knife. He gave the bloody head to the mother. The poor woman screamed. They took her outside and she never came back.<sup>21</sup>

## **3. Rape as an act against men**

Rape is as much an act against men as it is against the body of the woman. Many husbands, fathers and brothers are forced to watch.

In front of a hundred prisoners they raped and tortured women and girls for days. It was unbearable to watch girls being raped in front of their fathers.<sup>22</sup>

Almira Ajaanovic was raped for five nights, with different men each time. On the sixth night, they heightened the humiliation by raping Almira in front of her father.

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<sup>20</sup>Carol J. Williams, "Balkan War Rape Victims: Traumatized and Ignored," Los Angeles Times, 30 Nov 92.

<sup>21</sup>"Rape After Rape After Rape," New York Times, 13 Dec 92.

<sup>22</sup>Ibid.

That Chetnik said he was going to marry me. My father kept silent. Afterward the soldiers took her father to the toilet of the house, and hanged him by his necks, legs and hands until a neighbor came to rescue him. "I didn't want to see my father again for one month. I still cannot talk about this to him."<sup>23</sup>

A young man escaped from a Serbian prison camp and returned home to witness his sister being raped by Serbs. After the incident, she was so distraught that he shot her to put her out of her misery.

In some instances, men are even forced to commit the rape.

By the end of June, Chetniks brought another neighbor of ours and with a gun pointed at him they forced him to rape a 14-year-old girl. He stood trembling and stuttering with fear. Then he turned to a Chetnik he believed to be the leader and said 'Don't make me do it. I have known her since she was born--her father and I drank to her birth.'

They beat him in front of us until he died. It was an example to the other Serbs that there is no pity, that one must do what leaders order them to do.<sup>24</sup>

Many women are raped to punish their male family members. "I was raped and tortured too, because they knew that I am the wife of a leader of the Muslim party."<sup>25</sup> In Kotor Varos, a 27 year old Muslim woman interviewed by Amnesty

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<sup>23</sup>Roy Gutman, "Rape by Order," New York Newsday, 23 Aug 92, p.7.

<sup>24</sup>"Rape After Rape After Rape," The New York Times, 13 Dec 92, p.17.

<sup>25</sup>Ibid.

International in Zenuca stated that she had been raped by an officer in the Bosnian-Serb Army in a house in the town.

In June, Serbian forces sought to take full control of the town where local armed Muslims had been resisting from parts of the town and surrounding area. The victim's husband had been detained by Serbian forces but managed to escape. After her husband's escape, the victim was detained and questioned about her husband for three days in the corridor of a local school where men were being detained, beaten and interrogated.<sup>26</sup>

A 50-year old Croatian woman from the village of Berak near Vukovar, was raped by Serbs in a neighbor's house because they suspected her son of being one of the members of an organized resistance movement.

#### **4. Rape camps and forced pregnancy**

Women are held in rape camps, deliberately impregnated and held beyond the time when a safe abortion would be possible. "Now you will have Serbian babies for the rest of your life,"<sup>27</sup> A Serbian guard told a 17-year-old Muslim woman. Pregnant women received better treatment and were allowed to bath and drink milk because they were giving birth to "little Chetniks." "In August, some prisoners were exchanged, including me and my sons. Many women and girls who were pregnant remained in the camp. They were transferred to

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<sup>26</sup>"Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces," Amnesty International, Jan 93.

<sup>27</sup>Marcia Staimer, "Women and War: Double Jeopardy," USA Today, 1 Oct 92, p. 13A.

a hospital and fed twice a day because the Chetniks said, they had to bear their offspring."<sup>28</sup> (E.N., Age 14 and her mother).

Mariana, age 17, became pregnant during the first month of captivity. She and eleven others managed to escape to a Zagreb hospital. She is in shock, will not eat, and can not sleep unless heavily sedated. Asked if she will keep her baby, she replies "Never. I will not give birth. I will have an abortion. I don't want to give birth to this."<sup>29</sup> What she does not realize is that the hospital ethical committee in Catholic Croatia will not permit abortion. Instead, the hospital plans to arrange for an adoption.

Sofija, a 30 year old Muslim is now pregnant after being raped in a prison camp near the village of Parezevic. Out of shame, she is hiding from her family in a Sarajevo hospital. She is plagued by the thought of giving birth to the unwanted child growing inside of her. "I will not feed it. I do not want anything to do with it."<sup>30</sup> She toys with the idea of killing it once it is born.

In an interview from Zagreb with Asija Armanda, an anthropologist who is the leader of Kareta, one of Croatia's

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<sup>28</sup>"Rape and Soldiers' Morale," New York Times, 7 Dec 92.

<sup>29</sup>Tom Squitieri, "Weapons in Bosnia: Rape, Degradation," USA Today, 10 Aug 92, p. 1A.

<sup>30</sup>Tom Post, "A Pattern of Rape," Newsweek, 4 Jan 92, p. 33.



woman groups, said that many women are being held in "death rape camps." Some of the rape victims who have had babies are just giving them away. She told of women in the camps who were beaten and left without food and water, when their periods came, demonstrating that they had not become pregnant. Women are tortured to tell whether or not they are taking birth control.

Members of her organization did not believe the reports of mass rape and forced pregnancies when they first surfaced in mid-1991. The rumors were confirmed in January and February 1992 when women in the advanced stages of pregnancy started arriving in camps.

Being pregnant does not guarantee that the raping will stop. One woman, a nurse from Brezovo Polje, told doctors that the Serbs had decided not to kill her, but brought her to their military hospital. She worked every day for them but at night she was raped. She was sick. She was desperate. She told them she was between two and three months pregnant. But it meant nothing to them.

#### **B. THE EFFECTIVENESS OF RAPE AS A TACTIC**

Rape in Bosnia been effective as a tactic. It is serving to achieve the goals of the Serbs. The Serbs are winning, with acquisition of 75% of the territory. They have robbed countless civilians of their possessions, their land, their lives and their dignity. Women of reproductive ages have been

particularly targeted for rape and murder, so that the Muslims will not be able to replenish their population. About half of the nearly 2 million Muslims who lived in Bosnia are now in exile.

#### **1. The status of victims**

Rape victims in Bosnia are ignored. Before the war rape was so rare that there are no established treatment centers for victims. Women suffer great psychological trauma. Most are exhausted and in a state of shock. Their particular medical needs to include vaginal infections and venereal disease are of low priority, while doctors busy themselves treating those with life-threatening injuries.

Pregnant women who reside in Croatian refugee camps are unable to obtain abortions because of Catholic religious practices. These women do not want to return to their homes. The victims say that right now they would like to be anywhere but in Bosnia. Once they leave, they do not plan to ever return again. When asked if she would return to her hometown, Mersiha, Age 17, echoed a response that is heard over and over from many Muslims, not only from rape victims or even women:

Under no circumstances would I return to live in the same village with Serbs as before. I would never let my children go to school with their children. I would not work with them. In fact, I would not live in the same state with them.<sup>31</sup>

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<sup>31</sup>Slavenka, Drakulic, "Women Behind a Wall of Silence," Nation, 1 Mar 93, p. 269.

"We feel that we have lost everything...Every woman, if she is raped, has to feel the same."<sup>32</sup> (Heira, 25). Women who are raped have almost no future. Young women from Liplje view their lives as mothers and wives with skepticism.

Everyone who is with us now [other refugees] does not believe we were forced. And they think we are going to go with them [Serbs] again. We can't imagine marriage as a normal thing.<sup>33</sup>

## **2. The attitudes of men**

In an effort to re-shape attitudes towards rape victims as "damaged goods," the Imam, the highest Bosnian Muslim authority, has issued a proclamation that men should marry these women. But, this is unlikely to happen. In fact, in the aftermath of war women will be rejected by their men as with peacetime rape. They, the victims will bear the burden of the blame for having been raped.

## **C. MYTHS ABOUT RAPE AND THE BOSNIAN WAR**

### **1. Rape: The female problem**

Rape in Bosnia is not only about women. Women are the victims, but the broader issue is one of human rights- the ultimate right to the privacy of our own bodies. "Women's rights" are human rights. Women have the right to food, shelter, property, reproductive choice, social security,

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<sup>32</sup>Ibid, p. 39.

<sup>33</sup>Roy Gutman, "Rape by Order," New York Newsday, 23 Aug 92, p. 7.

health care and employment. Women have the right to political and religious freedom of expression, freedom from torture or slavery, access to education and the civil privileges of citizens. Women have a right to a livelihood free from all forms of violence, to include rape.

Women remain invisible victims of political oppression and are inherently forgotten as political players. They are routinely sexually abused as prisoners, imprisoned for peaceful beliefs and activities, tortured, denied the right to a fair trial, abducted, disappeared and extra-judicially executed.<sup>34</sup>

These violations, assumed to be perpetrated only against men prompted the 1992 Amnesty International special report on human rights abuses against women, which was long overdue. Women have yet to be safeguarded by the influence of international outrage and pressure.

## **2. Rape: the Bosnian problem**

Rape in Bosnia is not a Balkan issue, but one of global concern. There are many "Bosnias" around the world when it comes to the violence and rape of women. Unfortunately, they have not experienced the media coverage of the atrocities in the former Yugoslavia.

Violence against women exists in all societies on a daily basis. This violence exists in all forms from beatings, mutilation, burning and rapes. In the Sudan and Somalia,

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<sup>34</sup>Ibid.

infibulation or female circumcision is practiced on 9 out of 10 girls. In Peru 70% of all crimes reported to the police are of women beaten by their spouses. Bosnia is just one example of the violence against women in today's society.

There are no special factors or circumstances which are conducive to rape in Bosnia. Many Americans point to the built-up hatred of the ethnic factions in Bosnia as an underlying reason for mass rape. It is true that there is a history of conflict between the Serbs, who have traditionally been peasants and the urban Muslims, who have enjoyed a more privileged life. But, by allowing ethnic conflict to account for the incidences of rape, we only mask the problem.

Rape does not need a political motivation, just a total disregard for the body of the female. Rape in war has no respect for a woman's ethnicity, race, religion, social standing, or political beliefs.

Rape must be stripped of all other "motivations" and seen for what it is, a violation of women. Rape signifies power, because historically men have used it as a tool to inflict power and control over women. As women became the property of men, rape transferred as power over man. The issue of rape in war is not power of one ethnic group, religion, race, or political belief over another, but power of man over the body of the woman.

Rape in Bosnia is about Americans, too.

The US is a rape culture because both genders are socialized to regard male aggression as a natural and normal part of sexual intercourse. Among modern societies, the frequency of rape varies dramatically, and the US is among the most rape prone.<sup>35</sup>

In 1980, for example, the rate of reported rape and attempted rape for the US was eighteen times higher than the corresponding rate for England and Wales (West, 1983). In the United States, we are not as civilized as we think. Each year 683,000 rapes of women are reported each year. Three women are raped per second, 78 per hour. In 1991, assaults of males 12 years of age and older, averaged 20,000. One out of every four college females can expect attempted rape or rape within her four years in college.

### **3. Rape: The act of the unprofessional military**

"Professional militaries do not rape." This statement is similar to the "lunatic theory" of the rapist, which assumes that the rapist is suffering from some mental disorder. In this case, the rapist is undisciplined. The rapist is not normal. However, rape is not behavior confined to the abnormal. Many men possess the attitudes and beliefs necessary to commit a sexually aggressive act. Male aggression is not unusual or strange. Traditional socialism encourages males to associate power with "maleness" and

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<sup>35</sup>Ibid.

weakness with "femaleness." "Professional" militaries are not exempt.

**a. Why armies rape**

One might then ask the question, then why is it that some armies rape and some do not? Let's look at rape in general and ask, why is it that some men rape and some do not? All men are potential rapists. But this is not to say that all men would rape, just as each of us is capable of burglary, but not all of us would choose to become burglars.

Men who rape see rape as a means of control over women. Those who do not rape, obviously do not view women in that fashion or perhaps not to the extent that their attitudes manifest themselves the act of rape. There are men who feel that it is morally wrong to rape, just as they feel that it is morally wrong to commit any other illegal act.

Perhaps, it is easier to look at why men do rape. In 1981, in a study of a sample of rapists confined in a Virginia prison, Scully and Marolla, attempted to draw conclusions as to why men raped. Some 114 rapists looked at rape in terms of the "rewards" they received. Rewards included (1) revenge and punishment, (2) rape as an "added bonus," that is the act of rape in conjunction with some other crime such as burglary, and (3) rape for the purpose of sexual access.

Rape during war also has its rewards. Rape in war is considered the reward of the conqueror. During the invasion of Berlin in WWII,

hordes of Russian troops coming behind disciplined front line veterans...demanded the rights due the conquerors: the women of the conquered.<sup>36</sup>

A key element of revenge, discovered in the study was the idea of "collective liability," which suggests that an entire category of people must "pay." "Over and over rapists talked about getting even with their wives or other significant women."<sup>37</sup> One rapist, after a heated argument with his wife over what turned out to be misdiagnosed case of venereal disease, drove around "thinking about hurting someone."<sup>38</sup> He offered a young lady a ride who's car had broken down and raped her.

I have never felt that much anger before. If she had resisted, I would have killed her...The rape was for revenge. I didn't have an orgasm. She was there to get my hostile feelings off on.<sup>39</sup>

In the Bosnian war, the Serbian forces insist that Muslim women must pay for their entire ethnic group.

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<sup>36</sup>Cornelius Ryan, The Last Battle, New York: Simon and Schuster, 1966, pp. 26-33 and 484-493.

<sup>37</sup>Joseph Scully and Diane Marolla, "Riding the Bull at Gilley's: Rapists Describe the Awards of Rape," Feminist Frontiers III, New York: McGraw-Hill, 1993.

<sup>38</sup>Ibid.

<sup>39</sup>Ibid.



Although, in the case of rape, it is female gender who pays, regardless what the specific reason for the revenge is. In rape, women pay for just for being women.

As an added bonus, rape becomes an "incidental" benefit of other crimes such as burglary. The original intent of the perpetrator is not rape, but since he rapist is in the vicinity, he also takes the liberty to rape. The victim becomes a target of opportunity. One rapist who robbed a store stated, "I decided to rape her to prove that I had guts. She was just there. It could have been anybody."<sup>40</sup>

In war, incidental rape is also an added bonus. In an environment where killing becomes acceptable, all other lesser included offenses such as rape, also become acceptable, even though these offenses are "regulated" by international laws such as the Geneva Conventions.

Hit-and-run rape of large numbers of Bengali women was brutally simple in terms of logistics as the Pakistani regulars swept thru and occupied the tiny, populous land, an area little larger than the state of New York.<sup>41</sup>

The idea of sexual access as a reward of rape has been somewhat ignored by those who are trying to change the attitudes of society by dismissing rape as a sex act and emphasizing rape as an act of violence. However, what sets

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<sup>40</sup>Ibid.

<sup>41</sup>William Drummond, "Raped Bengalis Called Heroes," New York Post, 22 December 1971.

rape apart from any other type of assault is that it does indeed involve a sex act. Sex becomes a form of aggressive behavior.

There is a definite link between rape and sex. The attitude of the rapist is that he is entitled to sex and if refused, he has the right to use force to obtain it. This is a belief underlying such rape as date rape.

I think that I was really pissed off at her because it didn't go as planned. I could have been with someone else. She led me on but wouldn't deliver. I have a male ego that must be fed.<sup>42</sup>

In the Bosnian War, rape is used as a reward for sexual access. There is the establishment of rape camps for the purpose of unlimited sexual access for Serbian troops.

#### **b. Rape in the US military**

Aside from the question of the rape of professional militaries during war, there is the issue of rape during peacetime. Statistics taken by the US Army Criminal Investigation Division Command (USACIDC) show that more than 400 women are raped each year on the US Army bases around the world.

The Department of Defense (DoD) court-martialed 108 servicemen for rape in 1991. Soldiers were suspected in 2116 reported rapes on and off Army bases from 1986 to 1991.

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<sup>42</sup>Joseph Marolla and Diane Scully, "Riding the Bull at Gilley's: Convicted Rapists Describe the Rewards of Rape," Feminist Frontiers III, New York: McGraw-Hill, 1933.

Reports at Navy installations nearly tripled from 46 in 1987 to 134 in 1990. Last year, the number dropped slightly to 190. Among the 19 major Marine installations worldwide, the El Toro Marine Corps Air Station had the highest rate of reported rapes. There were 35 cases of sexual assault reported during the Persian War, of which seven were rapes.

Rape is punishable under the Uniform Code of Military Justice (UCMJ) Article 120 and yet it continues to exist. The UCMJ defines it as "sexual intercourse with a woman not the spouse of the accused, by force, and without consent."<sup>43</sup> An amendment to the article on 23 October 1992, removed the spousal exemption to rape and made the offense gender neutral.

"A woman serving in the US Army is 50 percent more likely to be raped than a civilian,"<sup>44</sup> according to an article written by Gary A. Warner, of the Orange County Register, on 30 December 1992. From 1987 to 1991, 484 female soldiers while on active duty were raped. Mr. Warner received this information from the Department of the Army as a result of a Freedom of Information Request Act request. The Army rate of 129 rape cases per 100,000 population in 1990 exceeds nationwide statistics for the same year compiled by the

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<sup>43</sup>The Uniform Code of Military Justice.

<sup>44</sup>Gary A. Warner, "Army Rape 50 Per Cent Higher Than Nation's," Orange County Register, 30 December 1992.

Federal Bureau of Investigation (FBI) of 80 rape cases per 100,000 women. These were the latest figures available.

The Army calls Mr. Warner's comparison unfair because the populations differ.

The civilian population includes all women. The Army's female population is more than 18 years old, with most women between the ages of 18 and 35. This group overall tends to be the group more likely to be raped in the civilian population.<sup>45</sup>

Critics of the Pentagon argue that

even this underrepresents reality. They believe that fewer rapes are reported than occur because of the fears of female soldiers that the male dominated command structure will not take reports seriously.<sup>46</sup>

The Army disputes this. The Pentagon hopes eventually to report crimes in a manner compatible with civilian law enforcement agencies.

Army records reveal that the following facts: (1) lower ranking female soldiers are most often the target of rapes. Of the 484 confirmed rapes from 1987 and 1991, five victims were officers and the remainder were enlisted. Enlisted personnel are more apt to live in the barracks where there is greater exposure to the male population there. These soldiers eat, sleep, live and work in the same environment. Officers tend to reside off-post and away from the troop

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<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

environment. (2) Seven female soldiers were raped in the Persian Gulf while serving in Operation Desert Storm. (3) Female soldiers were raped in overseas commands, including 175 in Germany, 33 in Korea, four in Japan and one in Korea.

Critics of the Pentagon feel that female soldiers are hesitant to report incidences of rape to a system which is predominately male.

The military treats and counsels the victim, provides defense of the accused, investigates the alleged crime and renders a verdict.<sup>47</sup>

Pentagon critics and their supporters in Congress are already making plans for reforms next year which will "wipe away the old boy network"<sup>48</sup> and is responsible for standing in the way of any changes in the way the military handles allegations of sexual offenses. They favor the establishment of a central sex crimes record clearinghouse in the Pentagon similar to the one that the FBI has, which would be able to track allegations of rape, investigations, arrests, prosecutions and sentences. Other desired changes include an annual report to Congress on crime within the military, more civilian oversight, and standardized counseling and media tests for alleged victims.

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<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

Regardless of the method of comparing data, one thing is clear is that in a highly disciplined organization such as the military, one would expect that rape would not exist. Women in the military should not have to worry about being raped by other soldiers. If this occurs with your fellow soldiers in peacetime, what type of conduct can be expected during wartime? In Operation Desert Storm, women were raped while risking their lives to serve their country. But some of them became victims, not at the hands of the enemy, but their fellow soldiers. Should she expect any less if captured by the enemy?

**c. The Army's response**

The Army is attempting to deal with the issue of rape through rape awareness education. Although, currently there is no Department of Army directed program, sexual assault and rape awareness training is incorporated in crime prevention programs at the unit level. Programs vary, but they normally include a 30-minute video entitled 'Someone You Know-Acquaintance Rape,' which is followed by group discussion, rape prevention seminars, a command-wide training packet which includes a videotape and prepared lesson plan, and a chain teaching program.

In an effort to support the national emphasis on date rape on college campuses, the United States Military Academy (USMA) also offers a program entitled, "The Dating

Crime Education Program." The program is implemented over the four-year span, starting with a three-hour block of instruction for the incoming freshmen class and separate one-hour block of instruction for each of the three upper classes.

The Army has also targeted its senior leadership. At the US Army War College, the Army has included in its instruction on "Responsible Command," the need for "strategic leader sensitivity" to sexual misconduct.

The Army has also established a comprehensive Victim/Witness Assistance Program which uses a multidisciplinary approach. The Army's Judge Advocate General Corps is the proponent for this program, as outlined in Army Regulation 27-10. Law enforcement also plays an important part of the program. Sensitivity training has been included in the training that military police receive at the US Military Police School in Fort McClellan, Alabama. This is crucial because they are often the first to have initial contact with rape victims. The Criminal Investigation Command (CID), has outlined detailed procedures in assisting the victims of rape in CID regulation 195-1.

The Army Medical Department (AMEDD) is responsible for and has devised a method for the special treatment both physically and mentally of rape victims. Also, as part of the program, witnesses and victims are kept informed of the status of convicted rapists in confinement and their release dates.

The Army first and foremost, wants to stop rape and sexual assault. In the event that these offenses do occur, it has devised means to ensure that the victims will be treated with dignity and respect.

**d. Rape as a Post-Cold War issue**

With the end of the Cold War and changes in future war, one wonders how this will affect the deployment of women. If international law such as the Geneva Convention can not protect women against rape among combatants of "states", can it be expected to protect females with the involvement of "nonstate" players to include tribes and ethnic factions?

Women in the military are prohibited from participating in those specialties which will involve us in combat, such as the infantry, but there is a question of how our forces will be composed to meet new and future conflicts.

Where will the "front line" be in future conflicts? How will women be deployed? What actions will our government take if they are raped by the enemy?



#### **IV. RAPE IN BOSNIA AS A MOBILIZING FORCE**

##### **A. WHY BOSNIA?**

What is so different about rape in Bosnia? Why has it served as a mobilizing force for women's groups around the world? After all rape is not new to war. The fact that mass rape in Bosnia is systematic is not even unique.

In fact, in the case of rape in Bangladesh, there are many similarities to rape in Bosnia. The majority of the rape victims in each case were Muslims. Women were impregnated, held in rape camps and forced into In terms of the numbers of rape victims, even the lowest estimate in Bangladesh, 200,000, was four times as many as the initial estimated accounts of rape in Bosnia at 50,000.

Bangladesh was unique. For the first time, the issue of rape received world attention, not as propaganda, but out of serious concern for the victims. From New York to London, women's groups mobilized to protest the atrocities. Their efforts resulted in several positive initiatives, aimed at the rehabilitation of those victims. Planned Parenthood in cooperation with the newly created Bangladesh Central Organization for Women's Rehabilitation set up clinics in Dacca and outlying areas for women who wanted to terminate unwanted pregnancies. Rapes in Bangladesh were addressed as

a "female" problem. All efforts was geared towards providing comfort to the victim in overcoming her ordeal.

#### **B. REDRESSING RAPE WITHIN A HUMAN RIGHTS FRAMEWORK**

The mobilization of women's groups in response to mass rape in Bosnia is different. Rape is not just a "female problem," but a "human problem." The focus is on gaining redress of rape and other women's rights issues within a human rights framework. Rape does not affect just women, but all of us. Women's rights are human rights.

What is good for women is good for humanity. By focusing on the issue of rape as one which is bad for humankind, the goal of women's groups is to create a greater ownership of the problem and search for a solution. Until men come to think of rape as something which does not just affect women, then women alone will continue to struggle far an end to the violence. Because men form the power most countries, equality for women is determined by the removal of male biases and their active support.

##### **1. Beyond borders: Rape and the new world polity**

The women's groups are mobilizing within a environment which emphasizes human rights as embodied in the idea of a "new world polity" in which we are all citizens of the world. World citizenship is defined as

the set of informal rules linking individuals to the world collectivity, just as national

citizenship is the set of more formal rules linking individuals to the national collectivity.<sup>49</sup>

Sovereignty and the idea of the nation-state

are changing. The common identification as a world culture is on the rise. The ideology of world citizenship implies that every human being is a member of one big society. Individuals are morally obligated to set aside distinctions in everyday action.

This world polity consists of several actors which are part of a larger world such as military alliances, business enterprises, and social movements such as the women's rights movement. The world polity contains complex rules as to how the polity can and should structure itself in relationship to the larger world. These rules may be in form of international laws and contracts such as the Geneva Conventions.

## **2. The impact of the evolution of the Information Age**

The evolution of the Information Age has helped to spread this idea of world citizenship. The whole world is tied together by an "electronic infrastructure" resulting in "global conversation."<sup>50</sup> Once a part of the world realizes

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<sup>49</sup>John Boli, "Sovereignty From a World Polity Perspective," Department of Sociology, Emory University.

<sup>50</sup>Walter B. Wriston, "The Twilight of Sovereignty," The Commonwealth, p. 712.

that others are enjoying better treatment, then they too will lobby for the same rights.

The global conversation prompts people to ask the same questions on a global scale. To deny people human rights or democratic freedom is no longer to deny them an abstraction articulated by the educate elite, but rather customs that they have seen on tv. Once people are convinced that things are possible in the village an enormous burden of proof falls on those who deny those privileges.<sup>51</sup>

In the world polity, each human being shares responsibility for the other person. Equality is universal. No one can be free unless all are free. As citizens of the world, all come together and work to eliminate any elements which could be destructive to the harmony of all people such as sexism and gender inequality.

### **3. Areas for redress**

How is it that these women groups plan to redress women's rights within a human rights framework? What actually needs to be done? Here are three areas that the feminists feel need to be readdressed. These are (1) domestic violence against women, (2) the subordination of women by religious and customary laws and (3) the structural adjustment of aid policies."

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<sup>51</sup>Ibid.

**a. Domestic violence**

International law does not extend to the domain of the state to domestic violence. An analogy needs to be drawn and established between international law and domestic violence. For example, the Convention of Torture might be used to deal with domestic violence under the category of torture or slavery. There is also an ongoing debate on whether the principle of "unequal protection of the law," is effective in dealing with domestic violence. The bottom line is that there must be some method of applying international law to domestic violence.

**b. Subordination of women by religious doctrine and traditions**

In some societies, women can not leave their homes without the permission of their husbands. Feminists are struggling with a method of using international law to interpret religious law.

**c. Structural Adjustment**

Structural adjustment has a devastating impact on the development of women. A human rights model might eliminated some of the injustices in structural adjustments. For example agricultural agencies such as the International Fund for Agricultural Development do not look at the impact on their aid policies on women. Millions of women can not

benefit from agricultural aid policies because they are not allowed to inherit property.

### **3. The forming of an ad hoc coalition**

In response to the rapes an ad hoc coalition was formed consisting of organizations such as The Center for Global Leadership, the International Women's Tribune Centre, the Center for Constitutional Rights, the Center for Reproductive Law and Policy and the International League for Human Rights.

These organizations are longstanding elements within the US, that deal with the issues of women's rights on a daily basis. They have decided to come together and orchestrate their efforts to protest the mass rapes in Bosnia as an escalation of the everyday abuses that women suffer around the world.

The ad hoc coalition protests the violation of women's human rights throughout the former Yugoslavia, and in particular systematic torture which includes the rape and forced pregnancy of Muslim women. Groups within the coalition are involved in various political and humanitarian efforts and call on others to join in making the following demands and activities:

The coalition wants to ensure that women receive fair representation during any peace negotiations in the Bosnian War, especially as they pertain to humanitarian aid and the

establishment of tribunals to prosecute rape as a war crime. For greater inclusion of women in the peace process, they recommend a formula developed by the Women's agenda at the UNCED (environmental) Conference which calls for no more than 60% no less than 40% of each sex on relevant decision making bodies.

The mandate of UN peace-keeping forces now in Bosnia should be expanded to include the protection of women who are threatened by rape. The current mandate for UN peacekeeping forces does not allow them to intervene to protect women from rape and even the International Committee for the Red Cross has noted that this is needed. The ad hoc coalition feels that the UN has a responsibility for protecting vulnerable groups, such as women and children.

A permanent UN war crimes tribunal should be established. Its makeup should consist of a fair representation of women as well as a mandate to give central attention to gender specific violations, such as rape and forced pregnancy, during all hostilities.

Under the 1949 Geneva Conventions and 1977 Protocols war crimes include actions which are "inhuman or endanger the physical or mental health or integrity of protected persons."<sup>52</sup> Rape and forced pregnancy are clearly war crimes

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<sup>52</sup>1949 Geneva Conventions, 1977 Protocols

as well as crimes against humanity, but they have not been prosecuted as such.

The coalition calls upon President Clinton to commit the US to a policy of "no safe haven for war criminals" from national governments. Most war criminals have been tried by national courts, not international tribunals and in the case of a war without surrender, a war crimes tribunal may only have a symbolic impact. The Geneva Conventions and the 1985 Torture Convention, however, establish universal national criminal jurisdiction.

Refugee status for women needing to escape the atrocities of war is demanded. The coalition also favors the legal recognition of gender-based persecution as grounds for asylum internationally and nationally. The UN High Commission for Refugees should support "gender-sensitive" and "woman-centered" humanitarian aid that responds to issues of sexual violence and forced pregnancy. Abortion be made available to those who seek it both within and outside the former Yugoslavia.

War crimes against women were included on the agenda of the UN World Conference on Human Rights held in Vienna in June 1993. The Human Rights Conference set the tone for human rights in the 21st century and was an important occasion for adding women's human rights to the world agenda.



At the UN conference, women from 171 countries met together to discuss international law as it applies to woman's human rights. This meeting was historic. For the first time the UN recognized violence against women as "human rights violations," not just "women's" issues.

The Vienna Declaration's Section on women's rights calls on the UN to name a special monitor on violence against women and to strengthen the Convention of the Elimination of All Forms of Discrimination Against Women.<sup>53</sup>

However, much to the disappointment of the women's caucus, the conference rejected proposals to investigate the "socioeconomic causes of gender-based violence,"<sup>54</sup> substitute "gender discrimination" wherever racism appeared in the declaration, or to address sexual orientation and disability.

The listing of women on the human rights agenda was a major effort in itself. It required a massive international effort. One of the major participants, the Global Campaign for Women's Human Rights consisted of about 950 women. The coordination for the mobilization of women's groups for the conference was lead by the Center for Global leadership of Rutgers University. Charlotte Bunch headed the program and

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<sup>53</sup>Gayle Kirshenbaum, "After Victory, Women's Human Rights Movement Takes Stock," Mg, September, October 1993.

<sup>54</sup>Ibid.

spent two years organizing petitions, launching a media campaign and holding numerous regional meetings.

And finally, the coalition supports hearings and passage in the US Congress of a pending resolution condemning rape and forced pregnancy as war crimes against women and crimes against humanity.

#### **4. Rape as a legal issue**

In a response to the rapes, three Croatian women's groups have obtained the services Catharine A. MacKinnon, a University of Michigan law professor and the foremost legal scholar on laws involving rape and pornography, to represent Muslim and Croatian rape victims before an international war crimes tribunal.

One of the goals of my clients is to establish that rape is a violation of women's human rights, for peacetime as well. The women in Croatia are very clear that this situation is both extreme and extraordinary, and at the same thing everyday.<sup>55</sup>

The UN recently voted to establish such a council. A DOD Joint Committee is currently in the process of formulating the rules of procedure.

As previously mentioned, rape is prohibited by the Geneva Conventions and 1977 Protocols. If there are sanctions against rape, why does it still exist in war? These rules

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<sup>55</sup>Ibid.

exist to regulate rape but history shows that there has been little in the way of prosecution of these as war crimes.

Following the end of WWII, the Nuremberg War Tribunals were held to prosecute the Germans for alleged war crimes. Although captured German documents corroborated the use of rape by the Germans as an act of terror, no one was convicted for rape.

In the Asian version of the WWII war trials, the Tokyo Tribunals, not one rape victim was called to testify about the atrocities in Nanking. There were witnesses, but they were the same missionaries who in writing a report entailing the atrocities of Nanking had neglected to write more than a couple of lines about the rape. As commander-in- chief of the forces in Nanking, General Matsui was hanged. However, during his defense he and all other Japanese officials continuously denied that the rapes occurred, dismissing them as rumors. The Japanese had attempted to conceal their crimes, knowing that they were a violation of the Geneva Conventions.

The big question is not whether or not rape is a war crime, but how will it be enforced as such? Prosecuting these rapes before an International tribunal would "attempt to create a foundation for a broader legal treatment of rape"<sup>56</sup> by first of all serving to "defeminize" the concept of rape

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<sup>56</sup>Judy Mann, "Rape and War Crimes," Washington Post, 13 January 1993.

and make it a "human rights" issue, instead. And secondly, prosecution would focus greater attention on rape in peacetime.

One of the goals of my clients, states MacKinnon, is to establish that rape is a violation of women's human rights, for peacetime as well. The women of Croatia are very clear that this situation is both extreme and extraordinary, and at the same time everyday.<sup>57</sup>

The UN War Crimes Commission was set up by the UN Security Council to start gathering evidence of war crimes for use in the prosecution before the council's war crimes tribunal. It is scheduled to complete its work within the next few months and will hand over the evidence gathered to a special war crimes prosecutor which will be appointed by the Security Council. The prosecutor and his own staff of investigators will then seek to develop from this material specific war crime charges against individuals for trial before the tribunal.

But a major drawback with the tribunal is that it will not have the authority to arrest those accused of war crimes and bring them to trial. They must volunteer to be prosecuted.

There are several other issues concerning prosecution of rapists before an international war tribunal. First of all, mass rape is difficult to prove. Rape has the reputation of

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<sup>57</sup>Ibid.

being the easiest to charge, but difficult to prove. The issue of rape and other atrocities committed in the conflict has been widely used a propaganda weapon with all sides minimizing or denying the abuses committed by their forces and maximizing those of their opponents.

Who will be prosecuted as rapists? Will they be individual soldiers following orders or those leaders of the forces? Those leaders who are seen by one side as being rapists are considered community leaders by another.

## **V. RAPE AND THE FEMINIST MOVEMENT IN THE US**

The issues of rape and sexual assault have been major concerns of the feminist movement since its revival in the late 1960s. Because of the work of the feminists, the contemporary understanding of rape and sexual assault, and the social response to sexual violence, have undergone significant revision.

### **A. THE EVOLUTION OF SEXUAL ATTITUDES**

Sexual attitudes have changed significantly since the colonial period. At that time, women were valued for sexual purity and viewed as the center of the family. Sexual intercourse was limited within the confines of marriage for the purpose of having children.

It was a sin for a women to engage in sex outside of the marriage. Even when the act was committed against her will, she was ostracized and blamed for her victimization. The family was defined as the central unit in society and sex roles were differentiated rigidly.

Men were dominant and women were submissive. The woman was regarded not as a person, but as a sexual type, a simple answer to his needs.<sup>58</sup>

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<sup>58</sup>Patricia Donat and John D'Emilio, A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change," Journal of Social Issues, Vol. 48, No. 1, 1992.

"A woman's value within society was based on her ability to marry and produce legitimate heirs.<sup>59</sup> Her greatest asset was the ability to find a husband. An "unpure" could not expect to marry into a respectable family. She became an "economic liability" to her father.

During the 1960s, as women entered the work force and became more involved outside the home, they also became more vulnerable as victims of rape. At the beginning of the decade, approximately 36% of women worked outside the home. As it ended, over 59% of women were in the paid labor force.

Some men saw this new assertiveness by women in stepping out into the work world as an affront against the traditional roles of men and women. They felt that the failure of these women to conform to traditional rules meant that they were loose and therefore deserved anything that might happen to them. They were not entitled to protection under the traditional guidelines which governed male-female relationships.

Societal definitions of rape demanded adherence to traditionally defined feminine roles and behaviors. The implicit warning to women was to behave accept traditional roles or to suffer the consequences of rape.<sup>60</sup>

Women began to resist traditional behaviors of appropriate female behavior and expressed their

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<sup>59</sup>Ibid.

<sup>60</sup>Ibid.

dissatisfaction. Betty Frieden, in 1963, in "The Feminine Mystique" and the National Organization of Women (NOW) founded in 1966, expressed women's changing views and interest in public forum. Women's liberationists also began work to change social policies. As women met they realized that their individual concerns were widely shared.

As a result, many women questioned the reasons for their oppression and they began to recognize that personal is political. The dilemmas that women were experiencing were not idiosyncratic, but constructed socially as a result of the hierarchical gender system in our culture.<sup>61</sup>

Kate Millet in her landmark book, "Sexual Politics" concluded that

within our patriarchal system, force takes a form of violence particularly sexual in nature and realized most completely in the act of rape.<sup>62</sup>

During the 1970s, rape became an important issue within the feminist movement. Sexual assault was redefined from the victim's perspective. A woman's victimization was an "experience of helplessness and loss of control, the sense of one's self as an object of rage."<sup>63</sup> The act of rape was not seen as an end in itself, but as a means of enforcing gender

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<sup>61</sup>Ibid.

<sup>62</sup>Ibid.

<sup>63</sup>Ibid.



roles in society and maintaining the hierarchy in which men maintained control.

Feminists refuted the long held belief that rapist were men who were helplessly controlled by overwhelming sexual impulses. Rape was recognized as an act of violence, not of sex as psychoanalytic theorists had previously held. Rape was "a form of domination and control, a weapon used to enforce women's subordinate role to men."<sup>64</sup>

In 1971, an article by Susan Griffin described rape as the "all American crime."<sup>65</sup> She reported that forcible rape is the most frequently committed violent crime in America today and emphasizes that all women are victims even if they are not the direct targets of the attack.

Rape and the fear of rape are a daily part of every woman's consciousness. Women's behavior is shaped by fear of attack. As a result women's movements are restricted. They fear to live alone, walk outside at night, smile at strangers and leave their windows open. Psychological research has shown that women's perceptions of vulnerabilities to attack and fear of being a victim of a violent crime are related to the amount of precautionary behaviors in which they engage.<sup>66</sup>

Women began to speculate about the relationship between the way women were portrayed in the media and the prevalence of rape and sexual assault.

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<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

The victims of rape were often portrayed as secretly enjoying their victimization. Movie images of present the women as resisting only initially and eventually becoming overwhelmed by sexual desire despite her original protests. These images reinforce the rape myths and prompted feminists to speak out against the way women are portrayed by the media. The images represent women as inferior and as victims rather than agents in their on sexuality.<sup>67</sup>

Groth and Birnbaum stated that "pornography is a media equivalent to the crime of rape. It is the sexual expression of power and anger." The phrase "pornography is the theory, rape is the practice became a rallying cry for some radical feminists."<sup>68</sup>

For years many women blamed themselves and did not define their sexual victimization as rape. Since the advent of feminism and with increased research and public education, women have begun to define unwanted sexual intercourse, even contact between acquaintances as rape.

As public discourse on sexual violence continued, it became increasingly evident that rapists were not only strangers behind bushes, but also might be dates, acquaintances, neighbors, husbands, friends, relatives. Feminists made the case that every man is a potential rapist and all women are potential victims.<sup>69</sup>

Due to this conceptualization, date rape has become an area of concern. In 1972, Ms. Magazine discussed the issue of date rape on college campuses across the country. But,

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<sup>67</sup>Ibid.

<sup>68</sup>Ibid.

<sup>69</sup>Ibid.

perhaps the most controversial policy governing conduct between the sexes has been the Sexual Offense Policy implemented by Antioch College in Yellow Springs, Ohio. No school has concocted guidelines quite as specific.

The goal is 100% consensual sex, and it works like this: it isn't enough to ask someone if she'd like to have sex. You must obtain consent every step of the way. If you take her blouse off, you have to ask. If you want to touch her breast, you have to ask. If you move your hand down to her genitals, you have to ask. If you want to put your finger inside her, you have to ask.<sup>70</sup>

## **B. THE EVOLUTION OF RAPE LAW**

During the colonial period, the rape cases most likely to come to court were those in which the perpetrator was from a lower social class than the victim or in which the victim was a married woman who physically resisted. "When men of lower status raped women of a higher social standing they threatened the prerogatives of other men."

In the 18th century, women were dependent on the courts and the community for their protection.

In order to ensure her safety, a woman who was sexually attacked needed to comply with the standards for her behavior by proving her nonconsent through physical and verbal resistance, and through immediate disclosure of the attack to family and neighbors. Proof of consent was necessary to verify that the women had not engaged in sexual acts outside of the marriage. If the woman could not prove nonconsent, she might be punished for the assault.<sup>71</sup>

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<sup>70</sup>Jan Doe, "Sexual Correctness-Have We Gone Too Far?," Newsweek, 28 November 1993.

<sup>71</sup>Ibid.

Rape was therefore an expression of male control over woman, regulated by law in a way that serves the men who hold political power more than it protects women.

As awareness of sex crimes increased in the 19th century, public concerns also escalated. Several sex psychopath laws were passed that permitted offenders to have indefinite commitment to state mental hospitals rather than jail sentences. This law reform, initiated by male legislators, was opposed by women who endorsed stronger criminal penalties for rape and assault.

Although psychopath laws were promoted as a measure to protect women, in reality these laws often resulted in white men being labeled as mentally ill and sent to state hospitals and black men found guilty and sent to jail, especially if the victim happened to be a white women.<sup>72</sup>

In addition to the changes in conceptualization of male offenders society's perception of the victim's role in the assault also changed in the 20th century. As female nature became sexualized and female desire for sexuality legitimized, rape became redefined as not only a male aberration, but also an act by which women to their own victimization. Many people became skeptical that a woman could be raped if she did not consent.

A well-known attorney began a rape trial once by placing a coke on the table, pinning it, and demonstrating to the jury his difficulty in forcing a pencil into the opening. The implication was that a woman would be to fend off a

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<sup>72</sup>Ibid.

man attempting to rape her. Therefore, if she was raped, she must have asked for it.<sup>73</sup>

Laws requiring physical evidence of penetration, the need for corroboration and allowing testimony about the victim's sexual history in court trials had the effect of placing the victim on trial. The criterion of force was determined by examining the victim/s behavior rather than the offender's behavior.

By the 1970s, women in New York needed the corroboration of a witness who saw or heard the assault to verify that she had indeed been raped and that the woman had resisted the attack. In addition, some states required no resistance as consensual intercourse and required the victim to have verbally said no or forcibly resisted or screamed. Unless the woman exhibited these behaviors, the man's behavior was not considered rape.<sup>74</sup>

In addition, juries often still received the traditional instruction that an accusation of rape is one which is easily made and once made difficult to defend against even if the accused is innocent. The jury was cautioned to be suspicious of the victim's testimony, much more so than in any other criminal case.

Feminists have lobbied for changes in rape legislation. Previous laws considered rape an all or nothing crime, in which offenders received sentences that ranged from 5 years to life depending on the particular states statutes. Maximum

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<sup>73</sup>Ibid.

<sup>74</sup>Ibid.

sentences of 30 to 50 years in prison were not uncommon for convicted rapist. Prior to the 1972 case of *Furman v. Georgia*, which invalidated arbitrary capital punishment laws, 16 states permitted the death penalty for rape. Some hypothesized that the severe penalties for rape may have discouraged juries from convicting a defendant because of a perceived senses of disproportion between culpability and the prescribed sentence. Most states have now revised their laws to include several levels of sexual assault with a broader range of penalties.

A perpetrator may be charged with first, second, or third degree rape, each charge varying in the maximum sentence following conviction. First degree rape is defined as forced sexual intercourse under aggravated circumstances. Second degree rape is described as forced sexual intercourse. Third degree rape is defined as nonconsensual intercourse or intercourse with threat to self or property. This calibrated system of offenses and penalties has increased conviction rates, and may therefore enhance the effectiveness of prosecution as a deterrent.<sup>75</sup>

In 1974, Michigan passed the first comprehensive rape reform legislation in the country. Since that time most states have enacted similar changes. These reforms have focused on the perpetrator's behavior as the legal criterion and not the victim's behavior alone. The context of the assault and the interaction between the victim and the assailant are becoming increasingly important.

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<sup>75</sup>Ibid.

Although rape legislation has changed a great deal, many changes are still sought. In about half of the states a man cannot be charged with sexually assaulting his wife unless they are legally separated. In six states, a husband can never be charged with rape of his wife. An example of this is the recent case of John W. Bobbit was acquitted of charges of marital sexual assault, not rape, of his wife. The State of Virginia where the incident happened, does not recognize spousal rape.

In one-fourth of the states a man can not be the victim of rape. In states with progressive statutes, a sex neutral terminology is used for both offender and victim. Even the UCMJ used to govern the conduct of military changed, its definition of rape to reflect neutrality.

In 70% of states a victim's past sexual behavior with persons other than the defendant is admissible for determining consent, while only six states prohibit the introduction of the victim's sexual history.

Education is still needed to change society's attitudes about rape. In the past women have been the target for increased awareness, but now men are being included in the process of consciousness raising.

The anti-rape movement must not limit itself to training women to avoid rape or depending on imprisonment of as a deterrent, but must aim its attention at changing the behavior and attitudes of men. Feminists have clearly

made a difference in the way rape and sexual assault are understood in our culture.<sup>76</sup>

### C. THE FUTURE OF THE FEMINIST MOVEMENT

As "the" element of society which has taken the lead in promoting the cause of women's rights and the change of sexual attitudes and gender equality in the US, it is necessary to look at the direction of the feminist movement is headed in furthering its work.

Of all the social movements which were active in the 1960s, the feminist movement remains the one which has endured. There have been lows and highs in the activity of the feminists. This is not to indicate some positive change in the status of women in the society. Throughout history, there has existed enough inequality for women in the society to always justify feminist activity.

However, the feminists have been most successful in making gains for women in periods where there was a general widespread discontent within society. The "first wave" of feminism grew out of the abolitionist movement and then peaked during the social reform in the 1890s. The 1960s saw the movement emerge. The fact that the feminist movement has had its highs during other social unrest, indicates that the concerns of women alone, are not enough to bring attention to the plight of women.

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<sup>76</sup>Ibid.



Women are only recognized for the injustices done to them if other groups are affected. As long as "its only women" complaining, then this is not cause for alarm. Through the complaints of other "interest" groups, the injustices and inequalities suffered by women legitimized.

The biggest drawback of the early feminist movement is that it failed to include all classes and races of women.

The women's movement remained relatively homogeneous in terms of race, class and ethnicity throughout the 1970 and 1980s. Although individual women of color and working-class women had participated in the founding of NOW and in the early protests against sexism in the civil rights movement, the women's movement attracted primarily white-middle class women.<sup>77</sup>

The feminist movement ended up being three movements within one. The first, concentrated on the issue of legality of white middle class women. In the second movement, black women struggled for economic equality and social equality. The third faction of the movement dealt with the issue of the working class women and economic equality.

Under the conservative administrations of the republicans, the feminist movement has suffered a backlash of its achievements of the 1970s. After forty years of faithful support of the ERA, the Republican party dropped it from its platform, called for a constitutional amendment to ban

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<sup>77</sup>Ibid.

abortion, and aligned itself with the economic and social policies of the New Right.

If the feminist movement of the future is to be successful, it must learn from the mistakes of its past. Because the women's movement has been based on the common identity of woman, it faces difficult and far-reaching challenges as it attempts to recognize differences and divisions among women.

## V. CONCLUSIONS

The evolution of women to a subordinated position in peacetime society is related to the rape of women during war. Rape in war is an extension and escalation of the violence which affects women in peacetime. The atrocities that are occurring in Bosnia while extraordinary, are still very everyday. Bosnia is only one example. Violence against women is the most common abuse of human rights in the world today.

Bosnia is significant in that it is serving as a catalyst for the mobilization of women's groups around the world. These groups have always been active in promoting gender equality. However, what is unique is that they are now seeking redress women's issues through a human rights issues. Women's right and human rights are synonymous.

The world polity which the emphasizes world citizenship and the rights of all people, including women, has provided an environment conducive to this change.

The magnitude of women's rights abuses demands international action. There are universal human rights laws and conventions such as the Universal Declaration of Human Rights, which guarantee the rights of all people, however the rights of women are not being promoted. The failure of these

mechanisms must be addressed. The truth is that the international community has done little to correct these abuses. Human rights organizations around the world are beginning to recognize that they can not just ignore 52% of the population.

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